

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

DWIGHT WAYNE ROGERS, JR., #1547330     §

VS.   §                     CIVIL ACTION NO. 4:18cv857

DIRECTOR, TDCJ-CID                                     §

ORDER OF DISMISSAL

Petitioner Dwight Wayne Rogers, Jr., a prisoner confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition should be dismissed. Petitioner has filed objections.

Petitioner is challenging his Denton County conviction for aggravated sexual assault, Cause Number F-2007-1147-A. He previously filed a petition for a writ of habeas corpus in this Court challenging the conviction, which was dismissed with prejudice. *Rogers v. Director, TDCJ-CID*, Civil Action No. 4:13cv573 (E.D. Tex. Sept. 21, 2016). The Fifth Circuit denied his request for a certificate of appealability. *Rogers v. Davis*, No. 17-40950 (5th Cir. July 25, 2018). The Fifth Circuit then denied his request for authorization to file a successive petition. *In re Rogers*, No. 18-40962 (5th Cir. Nov. 1, 2018). Undeterred by the Fifth Circuit's decision, he promptly filed the present successive petition on December 10, 2018.

The present petition should be dismissed in light of 28 U.S.C. § 2244(b)(3)(A). This Court lacks subject matter jurisdiction to consider a second or successive petition unless the Fifth Circuit has granted the petitioner permission to file it. *Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003). A district court should dismiss a second or successive petition for lack of subject matter jurisdiction that

has been filed without the permission of the Fifth Circuit. *Id.* at 838. Petitioner filed objections to the Report and Recommendation, but his objections do not show that he has received permission to file a second or successive petition. The petition must be dismissed for lack of subject matter jurisdiction.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for lack of subject matter jurisdiction. A certificate of appealability is **DENIED**. All other motions not previously ruled on are hereby **DENIED**. It is finally

**ORDERED** that the Clerk of Court shall return unfiled any new petitions for a writ of habeas corpus submitted by Petitioner regarding his conviction unless he shows that he has received permission from the Fifth Circuit to file it.

**SIGNED this 12th day of January, 2019.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE